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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/625,038

07/22/2003

Zijun Li

GC-REH 022

9515

7590

02/09/2006

Arthur J. Plantamura  
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EXAMINER

DODSON, SHELLEY A

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,038

Applicant(s)

LI ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 9-15 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON  
PRIMARY EXAMINER

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/2003.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

DETAILED ACTION

1.

Claims 1-18 are pending in this application filed July 22, 2003.

Applicant's claims are directed toward stable aluminum/zirconium antiperspirant solution free of amino acid and polyhydric alcohols.

Claim Rejections - 35 USC § 112

2.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in Ex parte Wu, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of Ex parte Steigewald, 131 USPQ 74 (Bd. App. 1961); Ex parte Hall, 83 USPQ 38 (Bd. App. 1948); and Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation of Al/Zr atomic ratio of 2 to about 6 and metal/chloride atomic ratio about 0.9 to about 1.25, and the claim also recites a Al/Zr atomic ratio of from about 6 to about 10 and metal/chloride atomic ratio from about 1.5 to about 1.65 and an Al/Zr atomic ratio from about 6 to about 10 and metal/chloride atomic ratio from about 0.9 to about 1.5 which is

the narrower statement of the range/limitation. Although applicant's recitations are directed toward three different zirconium species, the broad ranges and narrower ranges may not be claimed in the same claim. The Examiner advises applicant to place the different species and ranges in further limiting claims. Clarification is necessary in the above stated matter.

Claim Rejections - 35 USC § 103

4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5.

Claims 1-8 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shen USP 6,074,632, cited and supplied by applicant.

Shen discloses methods of making enhanced efficacy antiperspirant salts from stabilized aqueous solutions. In column 3 line 65 through to column 4, line 3, Shen further discloses that the aluminum-zirconium chlorohydrate is intended to include the tri, tetra, penta and octa chlorohydrate forms. In column 3, lines 38-65, Shen discloses that the Al:Zr ratio is about 2 to about 10, and the metal/chloride ratio is from about 0.73 to about 2.1. Shen further discloses that the halide is selected from the group consisting of Cl, Br, and/or NO<sub>3</sub>. In column four Shen further discloses that the HPLC peaks fall within the limits claimed by applicant. It is the Examiner's position that although Shen claims glycine which is an amino acid and the use of polyhydric alcohol, applicant's claims are "consisting essentially of" not "consisting of" and said claims are still open to other active ingredients. Applicant's method claims contain a negative proviso, excluding the presence of amino acids as well as polyhydric alcohols but the product claims do not. Applicant is invited to insert the negative proviso of the method claims into the product claims in order to exclude the presence of amino acids as well as polyhydric alcohols. It would have been obvious to one of ordinary skill in this art at the time the invention was claimed to have included the amino acids and polyhydric alcohols of the reference into the claimed composition in view of applicant's use of open terminology

"consisting essentially of" which does not exclude the presence of said ingredients. This is in the absence of any clear showing of unexpected results attributable to the exclusion of said ingredients.

Information Disclosure Statement

6.

The information disclosure statement (IDS) submitted on July 22, 2003, was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement and made it of record.

Telephone Inquiries

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number (571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached at (571) 272-0629.

8.

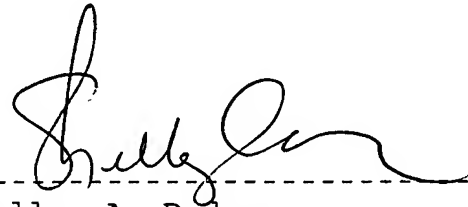
The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either



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Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Shelley A. Dodson', written over a horizontal dashed line.

Shelley A. Dodson  
Primary Examiner  
Art Unit 1616

February 6, 2006